# WEST VIRGINIA CODE CHAPTER 61 ARTICLE 7C

WV Legislature

## §61-7C-1. Short title.

This article shall be known and may be cited as the "West Virginia Firearms Marketing Clarification Act."

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## §61-7C-2. Definitions.

For the purposes of this article:

"Firearm" means any weapon which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive, as defined in 18 U.S.C. § 921(a)(3);

"Manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for sale or distribution;

"Negligent marketing" means any advertising, promotion, or marketing practice by a manufacturer or seller that directly poses a foreseeable and substantial risk of harm to the purchaser or specific identifiable individuals;

“PLCAA” means the Protection of Lawful Commerce in Arms Act of 2005, 15 U.S.C. 105, et seq.; and

"Seller" means any person engaged in the business of selling firearms or ammunition at wholesale or retail.

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**§61-7C-3. Limitations on negligent marketing claims.**

(a) A person may bring a negligent marketing claim against a manufacturer or seller of firearms or ammunition only if all of the following conditions are met:

(1) The marketing practice directly targeted individuals who are legally prohibited from owning firearms;

(2) The marketing practice encouraged or facilitated the unlawful use of firearms;

(3) There is direct cause and substantial proximate cause between the marketing practice and the harm suffered by the plaintiff; and

(4) The marketing practice violated a state or federal statute explicitly regulating the sale or marketing of firearms or ammunition in a manner that constitutes a willful and knowing violation of the law.

(b) If these conditions are not met, the court must, upon motion, summarily dismiss the action or dismiss any parties who are improperly joined.

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## §61-7C-4. Predicate exception limitation; construction.

(a) The predicate exception under the PLCAA may not be interpreted broadly. A claim may proceed only if the specifically cited statute was violated in the following manner:

(1) The statute explicitly regulates firearms or ammunition;

(2) The statute provides clear, concrete requirements that the manufacturer or seller failed to meet; and

(3) The violation of the statute was a proximate cause of the harm in question.

(b) General state consumer protection laws or public nuisance laws may not be considered statutes "applicable to the sale or marketing" of firearms or ammunition for the purposes of the predicate exception.

(c) The predicate exception may not be interpreted broadly to result in general consumer marketing statutes circumventing the PLCAA.

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